IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA ROANOKE DIVISION

ARLESS LYNN DALTON, JR.,)	
Plaintiff,)	Case No. 7:14CV00635
v.)	OPINION
NEW RIVER VALLEY REGIONAL JAIL,)	By: James P. Jones United States District Judge
Defendant.)	omica states District stage

Arless Lynn Dalton, Jr., Pro Se Plaintiff.

Plaintiff Arless Lynn Dalton, Jr., proceeding pro se, filed this civil rights action under 42 U.S.C. § 1983, alleging that jail officials deducted \$9.95 from his inmate trust account for a commissary order that was accidently sent to another inmate with a similar name. Upon review of the record, I find that while Dalton has fulfilled these prefiling conditions, his lawsuit must be summarily dismissed.

The court is required to dismiss any action or claim filed by a prisoner against a governmental entity or officer if the court determines the action or claim is frivolous, malicious, or fails to state a claim on which relief may be granted. 28 U.S.C. § 1915A(b)(1). To state a cause of action under §1983, a plaintiff must establish that he has been deprived of rights guaranteed by the Constitution or laws of the United States and that this deprivation resulted from conduct committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42 (1988).

The only entity that Dalton names as a defendant is the jail itself. The jail, however, is not a "person" subject to suit under § 1983. *McCoy v. Chesapeake Corr. Ctr.*, 788 F. Supp. 890, 893-94 (E.D. Va. 1992) (finding jail immune from suit and not a person for purposes of § 1983). Therefore, I will summarily dismiss this action without prejudice, pursuant to § 1915A(b)(1), as legally frivolous.¹

A separate Final Order will be entered herewith.

DATED: January 12, 2015

/s/ James P. Jones

United States District Judge

Even assuming that the plaintiff could prove that a particular jail official negligently delivered his items to another inmate, mere negligence by state officials does not support a claim of constitutional significance, as required to proceed under § 1983. *See, e.g., Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998) ("[T]he Constitution does not guarantee due care on the part of state officials; liability for negligently inflicted harm is categorically beneath the threshold" of constitutional protections). Accordingly, the present action is frivolous on its merits.